IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

FIRST APPEAL NO. 1178 OF 2003

The Municipal Corporation of
Greater Mumbai & ors. ... Aoppellants

V/s

Hasan Abdulla Tayab & anr. ... Respondents

Shri M.D. Patil for the appellants.

Shri Vivek Walawalkar with Ketan Parekh for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 28TH OCT., 2004.

P.C.:

1. Heard learned counsel for both parties.

2. Rule. Rule made returnable forthwith.

3. This is an appeal filed by the appellant Municipal Corporation against the order passed by the City Civil Court, Mumbai, decreeing the plaintiffs'/respondents' suit setting aside the contents of letter dated 9.4.1992.

4. The plaintiffs had filed a suit against the defendant Corporation for setting aside the contents of

letter issued by the defendant on 9.4.1992 and seeking decree for permanent injunction to be granted against defendant from acting in furtherance of notice dated 9.4.1992. Plaintiffs sought decree of mandatory direction to be given to defendants to forthwith grant new water granting granting to him new water connection for supply of adequate water to the two new buildingsk situated on C.T.S. Nos. 185 and 186 of Gundavali village, as per the applications submitted by the second plaintiff to the defendants. The suit came to be filed to seek redress against the threat, acts and omissions of the defendants in defiance, breach and violation of the judgment and order passed by this Court on 15.1.1991 in Writ Petition No. 732 of 1985.

The learned Trial Judge adjudicated the dispute and came to the conclusion that the Corporation had failed to prove that they had served the letter dated 14.5.1991 in terms of the order passed by this Court in Writ Petition No. 732 of 1985 and consequently the suit came to be decreed. Hence the appeal.

5. After hearing both parties for some time, it was suggested to the learned advocate for the appellant Corporation to seek instructions from the concerned

officers and engineers to ascertain the correct technical position and today the learned counsel for the appellants, on the advise of his officer who is present in the Court, has informed the Court that new water connection of the diameter of 1.25 inch can be provided to the said building in place of existing 1 inch connection. Taking into account the facts and circumstances, it must be noted that it is a fair proposal and also would be in compliance with the direction given by this Court in Writ Petition No. 732 of 1985 dted 15.1.1991.

Hence, it is directed that the appellant Corporation shall provide 1.25 inch new water connection to the respondents buildings in place of present one inch water connection. The said existing water connection shall be cut-ff after the new water connection is installed and water supply is restored vide directions issued in the impugned order in Writ Petition No. 732 of 1985. The new water connection shall be subject to compliance of all the legal formalities, such as, security deposit, etc.

With these directions, the appeal stands disposed of with no order as to costs.

C. c. expedited.

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